

Uninsured driving: The road to liability for insurers and third parties

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In a recent case concerning the question of whether a registered keeper permitted a vehicle to be driven without insurance, Aviva failed to recover from the registered keeper sums it paid following his son's uninsured use of his vehicle (*Aviva Insurance Ltd v McCoist and Another*).

Facts of the case

In January 2016 Mr McCoist purchased a car for his son, Argyll. McCoist was listed as the owner and registered keeper, although the car was kept where Argyll lived, not at McCoist's address.

Although the car was rarely used by McCoist, both were originally insured under a policy for its use. However, the policy was cancelled shortly after its inception in March 2016 when the black box fitted to the car recorded excessive speeding. Despite this, Argyll continued to drive the car, now without insurance. It was determined that McCoist was unaware of the uninsured driving until July 2016, at which point he took the car keys from Argyll and gave them to Argyll's mother. McCoist says he informed Argyll on multiple occasions, including at the start of July 2016, that he was forbidden to drive the vehicle.

Attempts to insure Argyll following the policy cancellation were unsuccessful, but McCoist obtained his own insurance with Aviva in August 2016 relating to several vehicles owned by him, including the car he had purchased for Argyll. Argyll was not included in this policy and remained uninsured to drive the vehicle.

In November 2016 the car was in a garage for repairs. Argyll obtained the keys from his mother after falsely advising her he was now insured to drive it and proceeded to remove the car from the garage. McCoist remained unaware.

In December 2016, a pedestrian was hit by the vehicle being driven by Argyll, receiving serious injuries. Argyll failed to stop at the scene, but the car was later traced by police. In August 2018 Argyll pleaded guilty to dangerous driving and driving without insurance.

Argyll was not a named driver under McCoist's policy with Aviva. However, under section 151 of the Road Traffic Act 1988 (RTA), the insurer of a vehicle is liable to meet any judgment in respect of liability arising out of the use of the vehicle, even if the driver is not insured by the policy. This meant that Aviva faced liability to meet the £200,000 judgment the injured pedestrian obtained against Argyll, as well as a further £44,000 by way of interest and costs.

Aviva sought to recover from McCoist the £244,000 paid, on the basis that he had permitted the driving without insurance and therefore was liable to reimburse them under section 151(8) of the RTA which provides:

Where an insurer becomes liable under this section to pay an amount in respect of a liability of a person who is not insured by a policy, he is entitled to recover the amount from that person or from any person who:

1. is insured by the policy by the terms of which the liability would be covered if the policy insured all persons, and
2. caused or permitted the use of the vehicle which gave rise to the liability.

Decision

The court concluded that McCoist had not permitted the uninsured use of the vehicle and Aviva therefore failed to recover sums paid.

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